

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
vs.) NO. 04-30034-MAP
)
MICHAEL CROOKER)

**RENEWED MOTION TO RECONSIDER DECISION AS TO “CAPABILITY” VERSUS
“DESIGNED OR INTENDED” DUE TO POST-DECISION EVENTS**

The defendant renews his Motion to Reconsider/For Clarification of Defendant’s Motion to Dismiss (Docket #57 and #87) due to events that have occurred since the February 23, 2006 Memorandum decision denying same.

1) After a troublesome investigation, the defendant found the case of United States v. Alpha McQuinn, 399-CR-196 AVC, in the District of Connecticut where, in a silencer case involving a potato, the Government requested and received an “intended” instruction as opposed to a “capable” one.

2) Defendant received under the Freedom of Information Act ATF Ruling 2005-4 pertaining to airgun silencers which used as its criteria the words “intention” and “intended” and did not use the words “capable” or “capacity.”

3) ATF Silencer expert Richard Craze, testified on May 9, 2006 that towels and other items can be silencers “depending on the circumstances.” This statement clearly implies “designed or intended” and not “capable” or “capacity to silence,” under a “capable” standard, an object is either a silencer or it is not, and it cannot depend on the circumstances.

WHEREFORE, the court should consider its novel and ground-breaking decision that the defining words in 18 U.S.C. §921 (a)(24) of “device for silencing” really means “device capable of silencing.”

Respectfully submitted,
THE DEFENDANT

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CERTIFICATE OF SERVICE

I, Vincent A. Bongiorni, Esq., do hereby certify that I have served a copy of the foregoing via CM/ECF to the Assistant United States Attorney, Kevin O'Regan, United States District Court, 1550 Main Street, Springfield, MA. 01103 this 22nd day of May 2006.

/s/ Vincent A. Bongiorni